

Attachment 1: State Density Bonus Law: CA Government Code, Section 65915

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Cal Gov Code § 65915

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*** THIS SECTION IS CURRENT THROUGH THE 2005 SUPPLEMENT ***
(ALL 2004 LEGISLATION)

GOVERNMENT CODE
TITLE 7. Planning and Land Use
DIVISION 1. Planning and Zoning
CHAPTER 4.3. Density Bonuses and Other Incentives

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Cal Gov Code § 65915 (2004)

§ 65915. Local government incentives, concessions or density bonuses

(a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall grant a density bonus and incentives or concessions described in subdivision (d) when the applicant for the housing development seeks and agrees to construct at least any one of the following:

(1) Ten percent of the total units of a housing development for lower income households, as defined in [Section 50079.5 of the Health and Safety Code](#).

(2) Five percent of the total units of a housing development for very low income households, as defined in [Section 50105 of the Health and Safety Code](#).

(3) A senior citizen housing development as defined in [Sections 51.3 and 51.12 of the Civil Code](#).

(4) Ten percent of the total dwelling units in a condominium project as defined in subdivision (f) of, or in a planned development as defined in subdivision (k) of, [Section 1351 of the Civil Code](#), for persons and families of moderate income, as defined in [Section 50093 of the Health and Safety Code](#).

(c)(1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in [Section 50079.5 of the Health and Safety Code](#), shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in [Section 50105 of the Health and Safety Code](#), shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial

occupant of the moderate-income units that are directly related to the receipt of the density bonus in the condominium project as defined in subdivision (f) of, or in the planned unit development as defined in subdivision (k) of, Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code. Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership. For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the moderate-income household was less than the fair market value of the home at the time of initial sale.

(d)(1) An applicant may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a condominium or planned development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a condominium or planned development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a condominium or planned development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the

densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g)(1) For the purposes of this chapter, except as provided in paragraph (2), "density bonus" means a density increase of at least 20 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b). For each 1 percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 5 or 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of, or a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, in which at least 10 percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a "density bonus" of at least 5 percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. For each 1 percent increase above 10 percent of the percentage of units affordable to moderate-income households, the density bonus shall be increased by 1 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this subdivision, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if

all of the following conditions are met:

(1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(3) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(4) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(5) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(6) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(i)(1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(j) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes a subdivision or a planned unit development or condominium project, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(k) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(l) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p)(1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

- (A) Zero to one bedrooms: one onsite parking space.
- (B) Two to three bedrooms: two onsite parking spaces.
- (C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

HISTORY:

Added Stats 1979 ch 1207 § 10, effective October 2, 1979. Amended Stats 1982 ch 1263 § 2, effective September 22, 1982; Stats 1983 ch 634 § 1; Stats 1984 ch 1333 § 2.

Amended Stats 1989 ch 842 § 3; Stats 1990 ch 31 § 3 (AB 1259), effective March 26, 1990; Stats 1991 ch 1091 § 64 (AB 1487); Stats 1998 ch 689 § 6 (SB 1362); Stats 1999 ch 968 § 7 (SB 948); Stats 2000 ch 556 § 1 (AB 2755); Stats 2002 ch 1062 § 3 (AB 1866); Stats 2003 ch 430 § 1 (AB 305).

Amended Stats 2004 ch 724 § 5 (AB 2348), ch 928 § 1 (SB 1818).

EDITOR'S NOTES:

See Note following Gov C § 65050.

Gov C § 65913.4, referred to in subdivision (l) of this section, and relating to reservation of units for lower income households, and regulatory concessions and incentives, was repealed in 1990.

NOTES:

AMENDMENTS:

1982 Amendment:

(1) Amended the first paragraph by (a) adding "or 10 percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code,"; and (b) substituting "either (1) grant a density bonus or (2) provide other incentives of equivalent financial value" for "enter into an agreement with the developer to either grant a density bonus or provide not less than two other bonus incentives for the project"; (2) added the second paragraph; (3) amended the third paragraph by (a) adding "maximum", and "and land use element of the general plan" in the first sentence; (b) substituting "number of housing units which is equal to 10 or 25 percent of the total" for "otherwise allowable density" in the second sentence; and (c) deleting the former fourth sentence which read: "Other bonus incentives which a city, county or city and county may agree to provide under this section include the following: (a) Exemption of the development from the requirements of Section 66477 and any local ordinance adopted pursuant thereto. (b) Construction of public improvements appurtenant to the proposed housing development, which may include, but shall not be limited to, streets, sewers and sidewalks. (c) Utilization of federal or state grant moneys or local revenues to provide the land on which the housing development will be constructed at a reduced cost. (d) Exemption of the development from any provision of local ordinances which may cause an indirect increase in the cost of the housing units to be developed."; and (4) substituted the fourth paragraph for the former fourth paragraph which read: "Nothing in this section shall preclude a city, county, or city and county from taking any additional actions which will aid housing developers to construct housing developments with 25 percent or more of the total units of a housing development for persons and families of low or moderate income. The determination of the means by which a city, county, or city and county will comply with this chapter shall be in the sole discretion of the city, county, or city and county; provided, that no developer shall be required to enter into an unacceptable agreement as a prerequisite to approval of a housing development."

1983 Amendment:

Added subdivision designations.

1984 Amendment:

Amended subd (a) by adding (1) "(1)" and "(2)" before "25 percent" and before "10 percent"; and (2) "(3) 50 percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.2 of the Civil Code," before "a city".

1989 Amendment:

(1) Added subd (a); (2) redesignated former subd (a) to be subd (b); (3) substituted subd (b) for the former subdivision (b) which read: "(b) A developer may submit to a city, county, or city and county a preliminary proposal for the development of housing pursuant to this section prior to the submittal of any formal requests for general plan amendments, zoning amendments, or subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the housing developer in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section."; (4) added subd (c); (5) redesignated former subd (c) to be subd (d); (6) amended subd (d) by (a) substituting "procedures under" for "manner in" in the second sentence; and (b) adding the fourth and fifth sentences; (7) added subd (e); (8) redesignated former subds (c) and (d) to be subds (f) and (h); (9) added "as of the date of application by the developer to the city, county, or city and county" at the end of the first sentence of subd (f); (10) added subd (g); and (11) amended subd (h) by (a) substituting "20 percent" for "25 percent"; (b) substituting "lower income households" for "persons and families of low or moderate income"; (c) substituting "very low income" for "lower-income"; and (d) adding "and at least one additional concession or incentive identified in Section 65913.4".

1990 Amendment:

(1) Amended subd (b) by (a) substituting "subdivision (h)" for "Section 65913.4"; and (b) adding "to provide for affordable housing costs as defined in Section 50052.5 of the Health and Safety Code or"; (2) amended subd (c) by (a) adding "or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program"; at the end of the first sentence; (b) substituting "lower income households, as defined in Section 50079.5 of the Health and Safety Code" for "persons and families with incomes at or below 80 percent of area median income" in the second sentence; (c) substituting "very low income households, as defined in Section 50105 of the Health and Safety Code" for "persons and families with incomes at or below 50 percent of area median income" in the third sentence; and (d) adding "additional" after "least one" in the last sentence; (3) added subd (h); and (4) redesignated former subd (h) to be subd (i).

1991 Amendment:

Routine code maintenance.

1998 Amendment:

Substituted (1) "Section 51.3" for "Section 51.2" before "of the Civil Code" in subd (b); and (2) "California Building Standards Commission" for "State Building Standards Commission" in subd (h)(1).

2002 Amendment:

Substituted the section for the former section which read: "(a) When a developer of housing proposes a housing development within the jurisdiction of the local government, the city, county, or city and county shall provide the developer incentives for the production of lower income housing units within the development if the developer meets the requirements set forth in subdivisions (b) and (c). The city, county, or city and county shall adopt an ordinance that shall specify the method of providing developer incentives.

"(b) When a developer of housing agrees or proposes to construct at least (1) 20 percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (2) 10 percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code, or (3) 50 percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code, a city, county, or city and county shall either (1) grant a density bonus and at least one of the concessions or incentives identified in subdivision (h) unless the city, county, or city and county makes a written finding that the additional concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c), or (2) provide other incentives of equivalent financial value based upon the land cost per dwelling unit.

"(c) A developer shall agree to and the city, county, or city and county shall ensure continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area

median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income. If a city, county, or city and county does not grant at least one additional concession or incentive pursuant to paragraph (1) of subdivision (b), the developer shall agree to and the city, county, or city and county shall ensure continued affordability for 10 years of all lower income housing units receiving a density bonus.

"(d) A developer may submit to a city, county, or city and county a preliminary proposal for the development of housing pursuant to this section prior to the submittal of any formal requests for general plan amendments, zoning amendments, or subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the housing developer in writing of the procedures under which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

"(e) The housing developer shall show that the waiver or modification is necessary to make the housing units economically feasible.

"(f) For the purposes of this chapter, 'density bonus' means a density increase of at least 25 percent, unless a lesser percentage is elected by the developer, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the developer to the city, county, or city and county. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units which is equal to 10 or 20 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

"(g) 'Housing development,' as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, 'housing development' also includes either (1) a project to substantially rehabilitate and convert an existing commercial building to residential use, or (2) the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

"(h) For the purposes of this chapter, concession or incentive means any of the following:

"(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.

"(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

"(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable cost reductions. This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

"(i) If a developer agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, county, or county may, at its discretion, grant more than one density bonus."

2003 Amendment:

(1) Amended subd (a) by adding (a) "and child care facilities as prescribed in this chapter" at the end of the first sentence; and (b) the second sentence; (2) substituted "subdivision (k)" for "subdivision (j)" in subd (b); (3) added subd (h); (4) redesignated former subds (h)-(n) to be subds (i)-(o); and (5) substituted "under this section although the city, county, or city and county may" for "under this section although the city, county and county, or county may" in subd (l).

2004 Amendment:

Added subds (a)-(p). (As amended Stats 2004 ch 928, compared to the section as it read prior to 2004. This section was also amended by an earlier chapter, ch 724. See Gov C § 9605.)

NOTE-

Stats 1998 ch 689 provides:

SECTION 1. (a) This act shall be known and may be cited as the Housing and Land Use Omnibus Act of 1998.

(b) The Legislature finds and declares that Californians desire their government to be run efficiently and economically, and that public officials should avoid waste and duplication whenever possible. The Legislature further finds and declares that it desires to control its own operating costs by reducing the number of separate bills affecting housing, land use, and related topics. Therefore, it is the intent of the Legislature in enacting this act to combine several minor, noncontroversial statutory changes relating to housing, land use, and related topics into a single measure.

NOTE-

Stats 1999 ch 968 provides:

SEC. 9. The Legislature finds and declares both of the following:

(a) The amendments made by this act to subdivision (c) of Section 65009 of the Government Code, excluding the portion of the amendment related to middle-income households, are declaratory of existing law.

(b) The amendments made by this act to Section 65915 of the Government Code are declaratory of existing law.

COLLATERAL REFERENCES:

Witkin Summary (9th ed) Constitutional Law § 828.

Affordable Housing & Growth Management. 1 CEB Land Use Forum 12.

Miller & Starr, Cal Real Estate 3d §§ 25:125, 25:171, 25:174.

LAW REVIEW ARTICLES:

1989 legislative summary. 8 Cal Real Prop J No. 1 p 1.

Review of Selected 1979 California Legislation. 11 Pacific LJ 573.

Review of Selected 1984 Legislation. 16 Pacific LJ 706.

NOTES OF DECISIONS

Although a local land use planning initiative intended to protect open space limited, in part of the county, the amount of land and number of development projects that would be able to qualify for a density bonus, it was valid because it did not preclude accommodation of the state policy of promoting low income housing construction in other regions of the county. Shea Homes Limited Partnership v County of Alameda (2003, Cal App 1st Dist) 2003 Cal App LEXIS 1152.

Source: Legal > States Legal - U.S. > California > Statutes & Regulations > CA - Deering's California Codes Annotated, Constitution, Court Rules & ALS, Comb 1

TOC: Deerings California Code Annotated, Court Rules and ALS > / . . . / > CHAPTER 4.3. Density Bonuses and Other Incentives > § 65915. Local government incentives, concessions or density bonuses

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